



Billing Code: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120919471-2584-01]

RIN 0648-BC59

Temporary Rule to Extend the Increase of the Commercial Annual Catch Limit for South Atlantic Yellowtail Snapper

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; emergency measures extended.

SUMMARY: NMFS issues this temporary rule to extend the effectiveness of the increase of the commercial annual catch limit (ACL) for yellowtail snapper implemented by a temporary rule published by NMFS on November 7, 2012. The commercial ACL for yellowtail snapper of 1,596,510 lb (724,165 kg), round weight, will be extended for up to an additional 186 days, until permanent measures are implemented, as requested by the South Atlantic Fishery Management Council (Council). The intent of this temporary rule is to ensure the commercial ACL for yellowtail snapper is based on the best scientific information available and to help achieve optimum yield (OY) for the yellowtail snapper resource.

DATES: The effective period for the temporary rule published at 77 FR 66744, November 7, 2012, is extended from May 6, 2013, through November 28, 2013, unless NMFS publishes a superseding document in the Federal Register.

ADDRESSES: Electronic copies of documents supporting this temporary rule may be obtained from the Southeast Regional Office Web site at <http://sero.nmfs.noaa.gov/sf/SASnapperGrouperHomepage.htm>.

FOR FURTHER INFORMATION CONTACT: Kate Michie, Southeast Regional Office, NMFS, telephone: 727-824-5305, email: [Kate.Michie@noaa.gov](mailto:Kate.Michie@noaa.gov).

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the snapper-grouper fishery, which includes yellowtail snapper, off the southern Atlantic states under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The Council prepared the FMP and NMFS implements the FMP through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Section 305(c) of the Magnuson-Stevens Act (16 U.S.C. 1855(c)) provides the legal authority for the promulgation of emergency regulations.

Background

At its September 2012 meeting, the Council requested that NMFS promulgate emergency regulations to increase the commercial ACL for yellowtail snapper based on the results of the May 2012 stock assessment conducted by the Florida Fish and Wildlife Conservation Commission's Fish and Wildlife Research Institute (FWRI) which indicated yellowtail snapper are not overfished or experiencing overfishing. Results of the stock assessment suggested that the acceptable biological catch (ABC) could increase, which could allow an increase in the commercial ACL resulting in positive social and economic benefits to commercial fishermen and dealers. The assessment was reviewed by the Council's Scientific and Statistical Committee (SSC) on October 10, 2012. Based on the stock assessment conducted by the FWRI, the Council's request and the SSC's ABC recommendation, and the current commercial sector's allocation, NMFS promulgated a temporary rule on November 7, 2012, to increase the commercial ACL for yellowtail snapper from 1,142,589 lb (518,270 kg) to 1,596,510 lb (724,165 kg), round weight (77 FR 66744). The temporary rule was implemented in time to avoid triggering the commercial accountability measure (AM) in 2012, which would have unnecessarily prohibited commercial harvest and possession of yellowtail snapper in the South Atlantic. The temporary rule was determined to be necessary to preserve a significant

economic opportunity that otherwise might be foregone and to help achieve OY for the fishery.

The temporary rule published on November 7, 2012, will expire on May 6, 2013. The Council has developed Regulatory Amendment 15 to the FMP to implement the increased commercial ACL for yellowtail snapper on a permanent basis. However, this regulatory amendment, if implemented, will not be effective before the 180-day temporary rule expires. Therefore, the Council requested an extension of the temporary rule at its March 2013 Council meeting, to continue the increase of the commercial ACL for yellowtail snapper while the rulemaking for Regulatory Amendment 15 is completed. This temporary rule extension will ensure that the commercial ACL for yellowtail snapper is based on the best scientific information available and will help to achieve OY for yellowtail snapper while avoiding an unnecessary closure for the commercial sector.

#### Comments and Responses

Section 305(c)(3)(B) of the Magnuson-Stevens Act authorizes the extension of an emergency regulation for up to 186 days, provided that the public has had an opportunity to comment on the initial emergency regulation and the Council is actively preparing a plan amendment or proposed regulations to address the emergency on a permanent basis. NMFS solicited public

comment on the November 7, 2012, temporary rule, and received one comment from a fisheries association that supported the temporary rule, development of Regulatory Amendment 15, and the extension of the temporary rule. No other comments were received.

#### Classification

This action is issued pursuant to section 305(c) of the Magnuson-Stevens Act, 16 U.S.C. 1855(c). The Regional Administrator, Southeast Region, NMFS, has determined that the extension of this temporary rule is necessary to preserve a significant economic opportunity for the commercial yellowtail snapper component of the South Atlantic snapper-grouper fishery and is consistent with the Magnuson-Stevens Act and other applicable laws. The Council developed Regulatory Amendment 15 to the FMP to establish the increase in the commercial ACL for yellowtail snapper on a permanent basis and has submitted the amendment to NMFS.

This temporary rule has been determined to be not significant for purposes of Executive Order 12866.

This temporary rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for prior notice and comment.

The Assistant Administrator for Fisheries, NOAA (AA) finds

good cause under 5 U.S.C. 553(b) (B) to waive prior notice and the opportunity for public comment on this temporary rule extension. Providing prior notice and opportunity for public comment would be contrary to the public interest. Failure to extend the increase in the commercial ACL for yellowtail snapper would result in the commercial ACL not being based on the best scientific information available, which would be contrary to National Standard 2 of the Magnuson-Stevens Act. Failure to extend the temporary rule may also result in the commercial sector being unnecessarily prohibited from harvesting and possessing yellowtail snapper in 2013 due to a closure, which would create adverse economic impacts for those dependent upon the commercial harvest of yellowtail snapper, especially in the Florida Keys. Extension of the temporary rule would allow for continued commercial harvest under the increased commercial ACL while the emergency regulations are being addressed on a permanent basis through Regulatory Amendment 15 to the FMP. This extension will give fishermen the opportunity to achieve OY for yellowtail snapper, in accordance with National Standard 1 of the Magnuson-Stevens Act.

For the reasons listed above, the AA also finds good cause to waive the 30-day delay in effectiveness of the action under 5 U.S.C. 553(d)(3).

Authority: 16 U.S.C. 1801 et seq.

Dated: April 24, 2013

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Alan D. Risenhoover,  
Director, Office of Sustainable Fisheries,  
performing the functions and duties of the  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

[FR Doc. 2013-10153 Filed 04/29/2013 at 8:45 am;  
Publication Date: 04/30/2013]